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DEFERRALS OF BUDGET AUTHORITY

COMMUNICATION

FROM

THE COMPTROLLER GENERAL, THE GENERAL ACCOUNTING OFFICE

TRANSMITTING

DEFERRALS OF BUDGET AUTHORITY NOT REPORTED TO THE CONGRESS BY THE PRESIDENT IN MILITARY CONSTRUCTION PROGRAMS FINANCED BY THE MILITARY CONSTRUCTION APPROPRIATIONS ACT FOR THE DEPARTMENT OF DEFENSE, 1990, PURSUANT TO 2 U.S.C. 686(a)

JULY 10, 1990.—Referred to the Committee on Appropriations and ordered to be printed

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Comptroller General
of the United States

Washington, D.C. 20548

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June 28, 1990

The Honorable Thomas S. Foley
Speaker of the House of Representatives

Dear Mr. Speaker:

This letter reports deferrals of budget authority in military construction programs that should have been, but were not, reported to the Congress by the President pursuant to the Impoundment Control Act of 1974.

Section 1015(a) of the Impoundment Control Act, 2 U.S.C. § 686(a), requires the Comptroller General to report to the Congress whenever he finds that any officer or employee of the United States has ordered, permitted, or approved a reserve of budget authority, and the President has failed to transmit a special impoundment message with respect to such reserves.

The deferral in question occurs in programs financed by the Military Construction Appropriations Act for the Department of Defense, 1990, Pub. L. No. 101-148, 103 Stat. 920 (1989), and unobligated funds carried over from previous years.1/ On January 24, 1990, Secretary of Defense Richard Cheney ordered a moratorium on the award of new contracts for military construction and the exercise of options under existing contracts. The moratorium also applies to contracts for architectural and engineering design services. The directive makes limited exceptions for projects in which the Department has a legal obligation under treaty or statute (such as for NATO infrastructure), projects required for base closures and realignments pursuant to Public Law 100-525 (1984), and projects needed to meet urgent military

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1/ Most of the fiscal year 1990 military construction appropriations are available for obligation for five fiscal years until September 30, 1994. Two appropriations, for the North Atlantic Treaty Organization Infrastructure and the Home Owners Assistance Fund, Defense, are available for obligation until expended. Amounts appropriated to the Base Realignment and Closure Account are available for obligation until September 30, 1995.

requirements, upon approval of the Deputy Secretary of Defense. The military construction moratorium was to remain in effect until April 30, 1990, to permit a review of military construction projects "in light of coming changes in the force structure and disposition of the U.S. Armed Forces."

On April 30, 1990, the Secretary extended the moratorium for an additional 45 days. He also ordered the Deputy Secretary of Defense to determine which of over 200 military construction projects should be cancelled and proposed for rescission. On June 14, 1990, Donald J. Atwood, Acting Secretary of Defense, extended the moratorium through November 15, 1990 on the same terms and conditions specified in the April 30, 1990 order. We understand that on June 20, 1990 the Secretary proposed cancelling $327 million in military construction projects identified in response to the April 30 directive. Secretary Cheney has proposed these projects for rescission to the Office of Management and Budget (OMB), and OMB is currently processing a special message proposing the rescissions to the Congress in accordance with the Impoundment Control Act. However, neither the Department or OMB have reported or, to our knowledge, plan to report the remaining funds affected by the moratorium in a special message under the Act.

Informally, officials at the Department have estimated that the services were only able to obligate roughly $200-$300 million of military construction funds before the moratorium went into effect. We are unable to ascertain with precision how much military construction budget authority remains affected by the moratorium order. However, it is estimated that it applies to 95 percent of unobligated military construction funds.

Under the Impoundment Control Act, a deferral of budget authority includes:

> "(A) withholding or delaying the obligation or expenditure of budget authority (whether by establishing reserves or otherwise) provided for projects or activities; or
>
> "(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority . . . ."

2 U.S.C. § 682(1).

Secretary Cheney's order directing the armed services not to obligate funds or any new construction projects or exercise options for existing ones for over 5 months, and the recent order extending the freeze for 3 additional months, is an action which not only delays but also precludes for the duration of the order the obligation of budget authority for Department activities, in this case the entire military construction program. Such an action is reportable as a deferral.

Accordingly, in accordance with section 1015(a) of the Impoundment Control Act, we are apprising the Congress of the withholding of budget authority in military construction programs.

Sincerely yours,

for Milton J. Socolar
Comptroller General
of the United States